

**OPINION
68-262**

May 20, 1968 (OPINION)

Honorable Edwin Sjaastad

Tax Commissioner

RE: Taxation - Exemptions - Definition of Income

This is in response to your letter in which you observe that the term "income" as used in Subsection 2 of Section 57-02-21, as amended by the 1967 Legislature, is not defined. You also state that it is your understanding that the term "income" means the gross income of the individual, less the expenses directly attributable to and incurred by the individual in obtaining the income. You then set forth three illustrations and ask for our opinion whether or not the individuals under the specific instances would qualify for the exemption under the aforementioned section. The illustrations are listed as follows:

ILLUSTRATION NO. 1: 'An individual who would otherwise qualify as a head of a family operates a small retail business and derives gross income therefrom of \$5,000.00. The individual has incurred and paid expenses directly attributable to this income, such as fuel, heat, rent, salaries and wages, and other normal business expenses of \$3,000.00. Thus, the individual realized a net income of \$2,000.00 from this business.'

ILLUSTRATION NO. 2: 'An individual who would otherwise qualify as a head of a family and owns and operates an apartment house and obtains gross income therefrom of \$10,000.00. This individual has incurred and has paid expenses directly attributable to this income in the form of minor repairs, fuel, heat, lights, water, and real estate taxes thereon in the amount of \$8,000.00 and, thus, receives a net income of \$2,000.00 from this business operation.'

ILLUSTRATION NO. 3: 'An individual who would otherwise qualify as a head of a family owns farm land which is held as rental property by him. He receives a gross rental of \$3,500.00. This individual has incurred and paid real estate taxes and insurance totaling \$700.00 and these expenses are directly attributable to the rental income which he obtains. Thus, his total net income is \$2,800.00.'

It is our understanding that all of the above individuals can deduct the expenses directly attributable to the production of the income described in the illustrations and, upon deducting the expenses, these individuals would meet the income requirement and would qualify for the exemption provided for in subsection 2 of section 57-02-21, provided, of course, they do not have sufficient other income to exceed the \$3,000.00 limitation and they make proper application for the exemption as provided for in that subsection."

We agree with your observations that the gross income less the

expenses directly attributable to and incurred by the individual in obtaining the income is the manner in which income is determined for purposes of Section 57-02-21.

It is therefore our opinion that the individuals mentioned in Illustrations numbered one, two and three would all qualify for the exemption under Subsection 2 of Section 57-02-21 of the North Dakota Century Code.

HELGI JOHANNESON

Attorney General